

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10785
Non-Argument Calendar

D.C. Docket No. 1:19-cv-21167-FAM

NORMA MARTIN,

Plaintiff-Counter Defendant
Appellant,

versus

E.C. PUBLICATIONS, INC.,
DC COMICS, INC.,
WARNER COMMUNICATIONS LLC,
d.b.a. DC Comics,

Defendants-Counter Claimants
Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(March 10, 2021)

Before MARTIN, BRANCH, and EDMONDSON, Circuit Judges.

PER CURIAM:

Plaintiff Norma Martin, proceeding pro se,¹ appeals the district court's grant of summary judgment in favor of Defendants E.C. Publications, Inc. and Warner Communications, LLC d/b/a DC Comics. In this civil action, Plaintiff asserted trademark and unfair competition claims under federal and state law and a claim for misappropriation of name and likeness under Florida law. Reversible error has been shown; we affirm in part and vacate in part the final judgment and remand for further proceedings.

Plaintiff is the widow of Don Martin,² a cartoonist and gag writer who was a regular contributor for MAD magazine between the 1950s and the 1980s. In 2010, Plaintiff obtained a federally registered trademark in the name "DON MARTIN." Plaintiff also says she acquired common law rights in the unregistered trademark and common law name "Don Martin."

Plaintiff filed this civil action in March 2019. Briefly stated, Plaintiff contends that Defendants used unlawfully the name "Don Martin" and the likeness

¹ We construe liberally pro se pleadings. See Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998).

² Don Martin died in January 2000.

of Don Martin in various MAD publications. Plaintiff also asserts that Defendants produced counterfeit cartoon books that included unauthorized colorized versions of Don Martin's original black-and-white cartoons.

Plaintiff asserted eight claims against Defendants, including claims for trademark infringement, trademark counterfeiting, unfair competition and false designation of origin, and contributory and vicarious trademark infringement, in violation of the Lanham Act, 15 U.S.C. §§ 1114, 1116, 1117, 1125(a). Plaintiff also asserted claims under Florida law for trademark infringement, unfair competition and false designation of origin, and for misappropriation of name and likeness. Plaintiff sought injunctive and declaratory relief and money damages.

In pertinent part, Plaintiff relies on these publications in support of her claims: (1) a book titled "Don Martin: Three Decades of his Greatest Work," published in 2014; (2) three spoof magazines ("MAD Spoofs Sci-Fi," "MAD Spoofs the '80s," and "MAD Stocking Stuffer"), published in 2016 and 2017; and (3) two MAD websites ("Fonebone Friday Dept." and "What's Your Don Martin Sound Effect Name?").

Defendants moved for summary judgment. Defendants asserted that several of Plaintiff's claims were either time-barred or involved foreign publications not subject to the Lanham Act. Defendants further argued that Plaintiff's remaining claims failed on the merits.

The district court held a status conference during which the parties addressed Defendants' motion. In an oral decision, the district court granted summary judgment in favor of Defendants. The district court concluded that each of Plaintiff's claims was either time-barred or nonactionable as outside the jurisdiction of the Lanham Act or Florida law. This appeal followed.

We review the grant of summary judgment de novo, "viewing the evidence and all reasonable inferences drawn from it in the light most favorable to the nonmoving party." Hornsby-Culpepper v. Ware, 906 F.3d 1302, 1311 (11th Cir. 2018) (quotations omitted). Summary judgment is appropriate when there exists "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

On appeal, Plaintiff challenges the district court's determination that her claims are time-barred.³ We review de novo the district court's choice of applicable statute of limitations. See Pinnacle Port Cmty. Ass'n, Inc. v. Orenstein, 952 F.2d 375, 377 (11th Cir. 1992).

The district court concluded correctly that Plaintiff's claims are governed by a four-year limitations period. Because Florida law provides no specific limitations period for Plaintiff's trademark, unfair competition, or misappropriation

³ Plaintiff raises no challenge to the district court's determination that Plaintiff's claims based on foreign publications are nonactionable under the Lanham Act and Florida law.

claims, the catch-all four-year limitations period in Fla. Stat. § 95.11(3)(p) applies. See Fla. Stat. § 95.11(3)(p) (providing a four-year limitations period for “[a]ny action not specifically provided for in these statutes.”). Florida’s four-year limitations period also governs the timeliness of Plaintiff’s federal trademark and unfair competition claims. See AmBrit, Inc. v. Kraft, Inc., 812 F.2d 1531, 1546 (11th Cir. 1986) (looking to Florida’s four-year limitations period to determine whether laches applied to a trademark infringement claim, explaining that “because the Lanham Act does not contain a statute of limitations, the period for analogous state law claims is to be used as a touchstone for laches.”).

Plaintiff contends her claims should be governed by the five-year limitations period in Fla. Stat. § 95.11(2)(b), which applies to “legal or equitable action[s] on a contract, obligation, or liability founded on a written instrument.” Because Plaintiff has alleged no breach of the contract between Don Martin and MAD magazine, this five-year limitations period is inapplicable, however. See Super Transp., Inc. v. Fla. Dep’t of Ins., 799 So. 2d 286, 289-90 (Fla. Dist. Ct. App. 2001) (concluding the limitations period in section 95.11(2)(b) was inapplicable absent a breach of the contract).

Applying the four-year limitations period, Plaintiff’s claims involving publications published before March 2015 -- including the complained-of 2014

Don Martin book -- are time-barred. Defendants were thus entitled to summary judgment on those claims.

Plaintiff, however, also sought relief based on publications Defendants published within the four-year limitations period, including the three spoof magazines and the two MAD websites. Because at least some of the complained-of publications underlying Plaintiff's claims fell within the applicable limitations period, the district court erred in concluding that Plaintiff's claims were time-barred in their entirety.

Defendants agree that Plaintiff's claims concerning the three spoof magazines and two websites were timely filed. Nevertheless, Defendants argue that summary judgment is appropriate given the lack of merit for Plaintiff's claims. Among other things, Defendants argue that Plaintiff failed to establish a valid trademark, abandoned her right to the trademark, and failed to demonstrate that Defendants' use of the trademark created a likelihood of customer confusion.

Because the district court granted summary judgment based only on timeliness of the claims, never did the district court address the merits of Plaintiff's claims that involved non-foreign publications. Nor did the district court make factual findings or set out a legal analysis pertinent to the substantive issues raised by Defendants. Absent additional factual findings or a plain explanation by the district court, we are unable to determine whether the entire grant of summary

judgment was proper in this case. See Callahan v. United States Dep't of Health & Hum. Servs., 939 F.3d 1251, 1266 (11th Cir. 2019) (remanding for the district court to consider claims not addressed in the first instance: “[w]e are, after all, a court of review, not a court of first view.”); Danley v. Allen, 480 F.3d 1090, 1091 (11th Cir. 2007) (a district court’s order must “contain sufficient explanations of their rulings so as to provide this Court with an opportunity to engage in meaningful appellate review.”).

We affirm the district court’s grant of summary judgment in favor of Defendants on Plaintiff’s claims involving pre-2015 and foreign publications. We vacate the district court’s grant of summary judgment on Plaintiff’s timely-filed claims involving post-2015 non-foreign publications. We remand for further proceedings.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.